IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Crl.A.477 SB of 1993
Date of decision:4.4.2007

Mohinder Singh and others

…..Appellant

v.

State of Punjab

…..Respondent

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL

Present: Mr. PS Brar, Advocate, for the appellants.
Mr. HS Bhullar, Advocate for the complainant.
Mr. DS Brar, DAG,Punjab, for the State.

JUDGMENT:

The appellants challenge their conviction under sections 307/326/323/34 IPC. They have been sentenced as under:-

1)Mohinder Singh	RI for three years and fine of Rs.250/-, in default, sentence of 3 months under section 307 IPC. RI for one year and fine of Rs.100/-,in default, sentence of one month under section 326/34 IPC.
2. Daman Singh and Joginder Singh	RI for three years and fine of Rs.250/-, in default, sentence of RI for three months under sections 307/34 IPC. RI for one year and fine of Rs.100/-, in default, sentence of one month under sections 326/34 IPC.

Case of the prosecution is that on 14.5.1991, Joginder

Singh PW6 had gone to irrigate his guava orchard field. At 11 AM, Nachhattar Singh, accused (since dead) armed with 'gandasa', Mohinder Singh armed with 'barchha', Daman Singh armed with 'takua' and Joginder Singh, armed with 'dang', came and raised a 'lalkara' that Joginder Singh, complainant will be taught a lesson for irrigating his field. Nachhattar Singh gave 'gandasa' blow which the injured intercepted with his right hand and Mohinder Singh gave 'barchha' blow at the forehead. Joginder Singh, accused gave 'dang' blow on the back of right thigh of the injured. He fell down and raised cries. Daman Singh accused gave two blows with 'takua' from the wrong side above his left ear on the head and on his right shoulder. Gurnam Singh PW7 and Kulwant Singh also raised cries on seeing the occurrence, on which the accused ran away. Gurnam Singh brought the injured to the Civil Hospital where he was medically examined by Dr. JS Dhaliwal PW3 at 12.30 PM. The cause of dispute was claim about possession of land. Injuries found on the person of Joginder Singh were described as under:-

> "1. an incised wound 7.5 cm x ½ cm x bone deep cut present on right forearm and handbase medio aspect. Fresh bleeding was present. Advised X-ray for treatment purpose.
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> 2. An incised wound present on right forehead 3.5 cm x 5 cm x bone deep muscle cut. It was above the right eye brow. Advised X-ray.

3. A contusion on left temporo parital bone 2.5cm in didameter near the upper edge of left pinna Advised x-ray skull.
4. An abraised swelling present on back of chest 7.5 cm x 2.5 cm. The patient complained of pain on movements. Advised x-ray chest/TP.
5. An abraised swelling present on right back of thigh 11.5 cm x 3.5 cm. Advised x-ray.
6. An abraised swelling present on right shoulder joint. Patient complained of pain on movement of joint. Advised x-ray."

Injury No.1 was declared grievous and Injury No.2 was declared to be dangerous to life.

ASI Joginder Singh PW8 recorded the statement of Joginder Singh, complainant in the hospital at 1.35 PM. He conducted investigation and challaned the accused.

At the trial, the prosecution examined Gurnam Singh, Patwari PW1, Dr. JS Dhaliwal, PW3, Dr. SP Bansal, Radiologist PW5, Joginder Singh, injured PW6, Gurnam Singh PW7 and ASI Joginder Singh, Police Investigator PW8, besides tendering into evidence the affidavits Exhibit PB and Exhibit PC of formal witnesses.

The accused denied the prosecution allegations and stated that they were in possession and had injunction in their favour and it was the accused, who attacked Mohinder Singh, for which a cross case was filed. The accused examined DW1 Dr.

Gurdev Singh Toor, who medically examined Mohinder Singh and found two injuries out of which Injury No.2 on the dorsal of left ulna styloid process was found grievous.

After considering the evidence on record, particularly the evidence of injured PW Joginder Singh and eye witness Gurnam Singh PW7, which was found to be reliable and consistent and free from any infirmity and which was also corroborated by medical evidence, the case of the prosecution was held to be proved beyond reasonable doubt. Injuries on accused were found to be self-suffered and plea of self-defence was rejected. Injuries on the person of accused were on non-vital part of the body. Joginder Singh, injured was 60-65 years of age and had received severe injuries, which was not possible, if Joginder Singh was the aggressor. No other person having received injuries, the plea that Joginder Singh alongwith his companions, who were armed and had caused injuries to the accused, was found not reliable.

I have heard learned counsel for the parties and perused the record.

It is clear from the evidence on record that the occurrence took place in broad day light and there is no dispute about identity. The injured was immediately carried to the hospital and medico-legally examined. Message to the police was also sent immediately and FIR was registered on the statement of the

injured. The version given by the complainant during the trial is consistent with the FIR, which was lodged soon after the occurrence. The version in a way admitted as the appellant also claims to have received two injuries on the non-vital part of the body. His plea of private defence has not been substantiated.

The law on the point is well-settled. Reference may be made to the judgment of the Hon'ble Supreme Court in **State of Madhya Pradesh v. Ramesh**, AIR 2005 SC 1186 (para Nos. 10 to 17). The burden of proving the plea of self-defence is on the accused, though he may establish it by reference to the circumstances emerging from the prosecution evidence itself and the test applied for discharging the burden is pre-ponderance of probabilities. It is true that number of injuries, is not a safe criteria for determining who is the aggressor. Existence of reasonable grounds for apprehending that death or grievous hurt would be caused, has to be shown. In the present case, no reasonable apprehension of danger to the body has been established by the accused.

Conviction of the appellants is, thus, fully justified and is affirmed.

Coming to the question of sentence, learned counsel for the appellant submitted that the occurrence took place about 16 years back and since the appellant has remained on bail for more

than ten years, at this stage, instead of sending the appellant to custody, it may be appropriate to require the appellant to pay adequate compensation to the injured, as at this stage,if the accused is to be sent to custody, it may rekindle the flames of anger and disturb the social harmony in the village life.

I have heard learned counsel for the State on this issue.

There appears to be merit in the contention advanced.

In **Hari Krishan and State of Haryana v. Sukhbir Singh,** AIR 1988 SC 2127, the Hon'ble Surpeme Court referring to section 357 of the Code of Criminal procedure, observed:-

> "10....This power was intended to do something to reassure the victim that he or she is not forgotten in the criminal justice system. It is a measure of responding appropriately to crime as well of reconciling the victim with the offender. It is, to some extent, a constructive approach to crimes. It is indeed a step forward in our criminal justice system. We, therefore, recommend to all Courts to exercise this power liberally so as to meet the ends of justice in a better way.
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> 11.The payment by way of compensation must, however, be reasonable. What is reasonable, may depend upon the facts and circumstances of each case. The quantum of compensation may be determined by taking into account the nature of crime, the justness of claim by the victim and the ability of accused to pay. If there are more than one accused they may be asked to

> pay in equal terms unless their capacity to pay varies considerably. The payment may also vary depending upon the acts of each accused. Reasonable period for payment of compensation,if necessary by instalments, may also be given. The Court may enforce the order by imposing sentence in default."

The Hon'ble Supreme Court in that case awarded compensation of Rs.50,000/-.

Having regard to the facts and circumstances of the case, ends of justice will be met if substantive sentence awarded to the appellant is reduced to the period already undergone, subject to their paying compensation of Rs.20,000/- each in addition to the sentence of fine imposed by the trial court, to the injured. In default, the appellants will undergo further RI for one year. The appellants will be at liberty to either pay the amount of compensation direct to the injured and furnish the receipt to the trial court or deposit the amount before the trial court, within six months, on which the trial court will disburse the same to the injured.

The appeal is disposed of.

April 4, 2007 (Adarsh Kumar Goel)
'gs' Judge